

# IN THE SUPREME COURT OF NIGERIA

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Suit No: SC123/2007

**Petitioner:** Mr. Peter Obi

And

**Respondent:** Independent National Electoral Commission, All Nigeria Peoples Party , Prince Nicholas Ukachukwu, People Democratic Party, Dr. Andy Uba Peoples Mandate Party , Arthur Obiefuna Nwandu, Ifeanyichukwu Okonkwo ( on behalf of Nigeria Advance Party

Date Delivered: 2007-06-14

**Judge(s):** George Adesola Oguntade ,Mahmud Mohammed ,Francis Fedode Tabai ,Ibrahim Tanko Muhammed ,Pius Olayiwola

## Judgment Delivered

This is an appeal against the judgment of the Court below given on 22nd May 2007. The Court below had affirmed the judgment of the Federal High Court, which declined jurisdiction in the matter on the ground that only the Election Tribunal could entertain same. I have read the proceedings of the two courts below and adverted my mind fully to the nature of the appellant's case. I have also given consideration to the arguments of counsel in their written brief and their oral argument. It is my firm view that what plaintiff/appellant had sought by his claim was the true interpretation of section 180(2)(a) of the 1999 Constitution. The Court under the 1999 Constitution and in particular section 251(l)(q) and (r) has the jurisdiction to interpret any provision of the Constitution or the law. It is therefore my view that the court below was wrong to hold that this was an election matter under section 285 of the 1999 Constitution. I therefore allow the appeal on jurisdiction. In the interest of justice and having regard to the fact that the relevant facts in this matter are not in dispute, I ought to proceed to exercise the power vested in this Court under section 22 of the Supreme Court Act. Let me reiterate that the only relevant fact is the date when the plaintiff/appellant took his oath of allegiance and oath of office, which is 17th March 2006. Happily the said provision is very clear and explicit and all I need do is to apply it. The provision reads: '180(2) Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period of four years commencing from the date when '

(a) in the case of a person first elected as Governor under this Constitution, he took the oath of allegiance and oath of office.' "There being no dispute on the fact that plaintiff/appellant took his oath of allegiance and oath of office on 17th March 2006 his term of office will expire on 17th March 2010. I now consider the orders to make. The plaintiff/appellant had in his claim before the High Court sought both declaratory and injunctive reliefs directed at protecting his four-year term of office. In its effect, the claim is in another way, that his term of office extends beyond May 29, 2007. However the 1st Respondent in spite of its awareness that the case was still pending in court went on to conduct the purported election. This court and indeed any court ought not to permit its processes to be treated with disdain. I therefore have the duty to ensure that plaintiff/appellant's appeal is not rendered nugatory. I therefore make the following declaration and order '

1. That the office of Governor of Anambra State was not vacant as at 29th May 2007.
2. It is ordered that the 5th Respondent Dr. Andy Uba should vacate the office of the Governor of Anambra State with immediate effect to enable the plaintiff/appellant Mr. Peter Obi to exhaust his term of office.

I will give my full reasons on 13-7-07.

Judgment Delivered By

George Adesola Oguntade. J.S.C.

The facts leading to this appeal are very simple and straightforward. In addition, the relevant provisions of the 1999 Constitution of Nigeria are very explicit in relation to the facts. The two courts below patently fell in error, because they misunderstood and in consequence misinterpreted the provisions of sections 184 and 285 of the 1999 Constitution. This error led them to conclude that the suit by the plaintiff/appellant could only be heard by an election tribunal. This suit was filed at the trial Court on 12th February 2007. At that time the office of the Governor of Anambra State had not become vacant neither was there a dispute as to whether the term of office of the plaintiff had ceased. The plaintiff (now appellant) only brought his suit to invoke the interpretative jurisdiction of the Federal High Court under section 251(1)(i) of the 1999 Constitution. There is clear jurisdiction in the Federal High Court to hear plaintiff's suit. As for the merit of

plaintiffs suit. Section 180(2)(ii) of the 1999 Constitution is clear and unambiguous. It says: '180(2) Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period of four years commencing from the date when'

(a) in the case of a person first elected as Governor under this Constitution, he took the oath of allegiance and oath of office. The only conclusion to be arrived at on the above provision of section 180(2) is that the 4-year term of office of the plaintiff commenced on 17-3-2006 when he first took the oath of office. His term will not end until 7-3-2010. To arrive at a conclusion different from the above will amount to a subversion of the Constitution. I am aware that the conclusion now reached will impose pain and hardship on those who have been made to expend resources and time in the quest to fill an office which was not vacant. But the Constitution of the land, which I have sworn to protect, must be upheld. I intend to give fuller reasons for my judgment on 13-07-2007. It suffices to say that I agree with the lead judgment by my learned brother Katsina-Alu presiding. I subscribe to all the orders in the said lead judgment.

Judgment Delivered By

Francis Fedode Tabai J.S.C.

I agree with the reasoning and conclusion in the lead judgment of my learned brother Katsina-Alu, J.S.C. I allow the appeal on the issue of jurisdiction. And by virtue of section 22 of the Supreme Court Act, I have also considered the originating summons. Reliefs 1 and 2 of the originating summons ought to be and are accordingly granted. I shall also give my fuller reasons on the 13/7/07.

Judgment Delivered By

Pius Olayiwola Aderemi, J.S.C.

The reliefs claimed are in the main declaratory- a pronouncement as to the state of the law. A court always has jurisdiction to make a pronouncement on the state of the law. Therefore the two courts below are wrong to have declined jurisdiction. Invoking the provisions of Section 22 of the Supreme Court Act, which I must do in the interest of justice, I hold that the appeal is meritorious. Full reasons to be given by me on 13th July 2007.

Judgment Delivered By

Christopher Mitchell Chukwuma-Eneh J.S.C.

I have read the judgment prepared and delivered by my learned brother Katsina-Alu J.S.C. in this matter and I agree with him that the High Court has the jurisdiction to interpret any provision of the Constitution and the law. I also allow the appeal on jurisdiction.

In the interest of justice and acting under Section 22 of the Supreme Court Act. I agree with him that there is merit in the substantive claim. I grant the declarations sought as per the lead judgment. I abide by all the orders made in the lead judgment. No order as to costs, I will give my reasons on 13/07/07.

Counsel

Dr. O. Ikpeazu SAN

with him

Dr. V.J.O Azinge

P.A. Afuba

E.D. Chukwuma

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Onyeka Nwokolo, C.N. Abiakam, Uju Onukwuli (Mrs.), Echezona Etiaba, Victor Ekim, J.I. Idigo, Prisca Ozo Ilesike, O. Nwankwo, Pat Onukwuli, Mazi Ugochukwu Onyejiuto, Kunle Jimoh, Ebube Azinge (Miss), Ifeoma Durugbor (Miss), Cliffors Eze Esq. and Emeka Offor Esq. ) For the Appellant

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Chief J.K. Gadzama, SAN (with him, Tony Idigbe SAN, Amaechi Nwaiwu SAN, Chris Uche SAN, Bolaji ayorinde SAN, Bello Fadile, Wale Adebayo, Tony Anyanwu, Bola Olotu, C.U. Nwnaeri. C.P. Oli, E.J. Gamaliel, and N.O. Dangla For the 1st Respondents

Mr. Arthur Obi Okafor (with him, Anthony Musa) For the 2nd Respondent

Mr. Ikechukwu Ezechukwu (with him, A.T. Udechukwu and Ogechi Ogbenna) For the 3rd Respondent

L.O. Fagbemi SAN, (with him, S.R. Dappa-Addo, H.O. Afolabi, A.O. Papoola, O.O. Ogunmola (Miss) and R.A. Bakare

(Miss) For the 4th Respondent

Prince Orji Nwafor Orizu (with him, Mazi Ugochukwu Onyechukwu) For the 6th and 7th Respondents

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